

at § 628.426(e), Review and approval (section 164(b)(2)).

(c) If, upon a determination under paragraph (a)(2) of this section to impose a sanction under section 164(b) of the Act, the recipient fails to promptly take the actions required under paragraph (a)(2) of this section, the Secretary shall take such actions against the recipient or the SDA/SSG as appropriate (section 164(b)(3)).

§ 627.704 Process for waiver of State liability.

(a) A recipient may request a waiver of liability as described in section 164(e)(2) of the Act.

(b)(1) When the debt for which a waiver of liability is desired was established in a non-Federal resolution, such requests shall be accompanied by a resolution report.

(2) When the ETA Grant Officer is resolving the finding(s) for which a waiver of liability is desired, such request shall be made no later than the informal resolution period described in § 627.606(c) of this part.

(c) A waiver of the recipient's liability can only be considered by the Grant Officer when the misexpenditure of JTPA funds:

- (1) Occurred at a subrecipient level;
- (2) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or
- (3) If fraud did exist, it was perpetrated against the recipient/subrecipient; and:
 - (i) The recipient/subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and
 - (ii) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.
- (4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and
- (5) The recipient requests such a waiver and provides documentation to demonstrate that it has substantially complied with the requirements of section 164(e)(2)(A), (B), (C), and (D) of the Act.

(d) The recipient shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act unless the Grant Officer determines that further collection action, either by the recipient or subrecipient, would be inappropriate or would prove futile.

§ 627.706 Process for advance approval of a recipient's contemplated corrective actions.

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request shall include a description and an assessment of all actions taken by the subrecipient to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain collection actions against a subrecipient where:

- (1) The subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A), (B), (C), and (D) of the Act;
- (2) The misexpenditure of funds:
 - (i) Was not made by that subrecipient but by an entity that received JTPA funds from that subrecipient;
 - (ii) Was not a violation of section 164(e)(1) of the Act, or did not constitute fraud; or
 - (iii) If fraud did exist, it was perpetrated against the subrecipient, and:
 - (A) The subrecipient discovered, investigated, reported, and prosecuted the perpetrator of said fraud; and
 - (B) After aggressive debt collection action, it can be documented that there is no likelihood of collection from the perpetrator of the fraud.
- (3) A final determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level;
- (4) Final action within the recipient's appeal system has been completed; and
- (5) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 627.708 Offset process.

(a) In accordance with section 164(d) of the Act, the primary sanction for